S.B.Civil Misc. Appeal No.593/94
Jagir Singh vs. Branch Managar, Union Bank of India &ors.

Date of Order: 18.10.06

HON'BLE MR. PRAKASH TATIA, J.

Mr. Vijay Kumar Agarwal for the petitioner.
Mr. Sudhir Sharma for the respondents.

Heard learned counsel for the parties.

The appeal is against the order dated 10.10.1994 by which the trial court declared that the appellant and respondents no.2 and 3, who are real brothers, are the successors for the property of the deceased Harmendra Kaur, their mother, who died on 14.12.1988. Since they three are the only legal heirs of Class-I of deceased Harmendra Kaur, therefore, each is entitled to 1/3 share in the poroperty, i.e. F.D.R. No.2682 and which was again deposited in FDR No.3828238/3295 dated 22.1.1991.

The grievance of the appellant is that the proceeding under the Indian Sucession Act under Section 372 are of summary nature and the rights of the parties and the title to the property are not decided by the court. It is submitted that while passing any order on the application under Section 372 of the Indian Succession Act, the court cannot issue direction to any party to pay or return the property of the deceased.

The learned counsel for the appellant alsosubmitted that Hon'ble the Apex Court in the case of Joginder Pal vs. Indian Red Cross Society

and others (2000 AIR SCW 3670), held that the finding given on application under Section 387 of the Indian Succession Act, 1925 are not final and do not operate as res judicata notwithstanding the fact that the issues are raised and evidence was led.

So far as factual aspect is concerned, there is no dispute that Hamendra Kaur mother of the appellant and respondents no.2 and 3 died on 14.12.1988. She never executed any Will in favour of any of his sons. The allegation of the appellant is that since deceased Harmendra Kaur was treated cruely by the respondents-sons, therefore, they are not entitled to the property of deceased Harmendra Kaur. That plea was not accepted by the court below. So far as the share of the appellant and respondents no.2 and 3 are concerned, it is not in dispute, therefore, the court below was right in holding that each of the sons of Harmendra Kaur, appellant and respondents no.2 and 3 are entitled to 1/3 share in the property of deceased Harmendra Kaur and the property specified is the F.D.R. In question.

So far as direction of the court below to the bank that the bank should pay 1/3 of the fixed deposit amount to appellant and respondents no.2 and 3 are concerned, that is only an innocuous and consequential order only.

This Court is not required to decide the question whether the finding recorded by order dated 10.10.1994 shall be res judicate in

subsequent proceeding or not because of the reason that according to the appellant himself, none of the party has filed any suit which may result into raising any objection about the finality of the decision given in the order dated 10.10.1994 on any of the issues.

Therefore, the present appeal is disposed of and it is held that the court below was right in holding that the appellant and respondents no.2 and 3 each are successors of 1/3 share of Smt. Harmendra Kaur and each is having share in the fixed amount to the extent of 1/3 amount only. Rest of the order directing the bank to pay the amount is not an executable order and effect of the order declaring the share of the parties shall remain as it is and the bank can only act in accordance with law.

(PRAKASH TATIA),J.

mlt.